MICHIGAN COURTS NEWS RELEASE
John Nevin, Communications Director
Ph: 517-373-0129 Twitter: @MISupremeCourt FB: facebook.com/misupremecourt

FOR IMMEDIATE RELEASE

Michigan Supreme Court oral arguments scheduled for March 9 – 10

LANSING, MI, March 2, 2016 - The Michigan Supreme Court will hear oral arguments on March 9 and 10 on the 6th floor of the Michigan Hall of Justice. Court will convene at 9:30 a.m.

Among the issues the justices will consider are questions about nondisclosure and non-compete agreements; marital assets; sentencing guidelines; accessing medical and billing records; scoring an offense variable; admission of testimony; a law firm operating agreement; and whether police officers unlawfully expanded a "knock and talk" procedure.

Oral arguments are open to the public. Links to the briefs and case summaries are available here.

The Court broadcasts its oral arguments and other hearings live on the Internet via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench.

Media interested in covering oral argument should notify the Public Information Office at (517) 373-0714 and complete the Request and Notice for Film and Electronic Media Coverage of Court Proceedings.

-More-

Michigan Supreme Court Oral Arguments
March 9 - 10, 2016

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

March 9 Morning Session

Docket # 151196

JAMES WADE, Thomas C. Miller
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Iosco – Bergeron, R.)

WILLIAM MCCADIE, D.O. and ST. JOSEPH HEALTH SYSTEM, INC., d/b/a HALE ST. JOSEPH MEDICAL CLINIC, Beth A. Wittmann
Defendants-Appellants.

In this medical malpractice case, plaintiff James Wade filed a complaint against the defendant physician and hospital, but did not file an affidavit of merit with the complaint, as required by MCL 600.2912d. The defendants argued that this omission required that Wade's lawsuit be dismissed, and they filed a motion for summary disposition. Wade disagreed, arguing that he had an additional 91 days to file his affidavit of merit under MCL 600.2912b(3), because the defendants failed to provide him with his complete medical records, as they were required to do. Wade admitted that the defendants produced some medical records, but contended that the records were incomplete and that billing records were not provided. The defendants, in response, argued that they provided all available records to Wade. The trial court granted the defendants' motion for summary disposition. But the Court of Appeals reversed this ruling in an unpublished, split per curiam opinion, and reinstated the lawsuit. The defendants filed an application for leave to appeal to the Supreme Court. The Court has scheduled oral argument on the application, ordering the parties to address "(1) whether the 91-day extension provided in MCL 600.2912d(3) for filing an affidavit of merit applies where the plaintiff claims that the defendants did not produce all medical records within 56 days after receipt of the notice of intent as required by MCL 600.2912b(5); (2) whether the defendants were obligated, under MCL 600.2912b(5), to explain to the plaintiff that certain records could not be produced because they had been destroyed; and (3) whether billing records are medical records for purposes of MCL 600.2912b(5)."

Docket # 150906

PEOPLE OF THE STATE OF MICHIGAN, Kathryn M. Dalzell
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(St. Joseph – Stutesman, P.)

MICHAEL ANDREW RADANDT, Eric W. Misterovich
Defendant-Appellant.

Two officers received an anonymous tip about a marijuana growing operation. They visited the home, and knocked on a door, but no one answered. So the officers followed a path to the back of the home, walked onto a deck, and knocked on a sliding glass door. No one answered, but from this vantage point, the officers heard voices, observed plastic sheeting and a fan (which they considered indicative of a marijuana grow operation), and smelled marijuana. They obtained a search warrant, which led to the discovery of marijuana plants and equipment used to grow marijuana. Defendant Michael Radant filed a motion to suppress the evidence, arguing that the officers violated his constitutional right against illegal search and seizure. The trial court denied the motion, and the Court of Appeals affirmed in a split, unpublished opinion. The Supreme Court will consider: (1) whether the police officers unlawfully expanded a "knock and talk" procedure by entering the back yard and walking onto a wooden deck, which was attached to the home, see *Florida v Jardines*, 569 US 1; 133 S Ct 1409; 185 L Ed 2d 495 (2013); and (2) if a constitutional violation occurred, whether the good-faith exception to the exclusionary rule applies under the facts of this case. See *United States v Leon*, 468 US 897; 104 S Ct 3405; 82 L Ed 2d 677 (1984).

Docket # 150591

INNOVATION VENTURES, LLC, d/b/a LIVING ESSENTIALS, Plaintiff-Appellant, — John J. Bursch

v (Appeals from Ct of Appeals) (Oakland – McMillen, P.)

LIQUID MANUFACTURING, LLC, K & L DEVELOPMENT OF MICHIGAN, LLC, LXR BIOTECH, LLC, ETERNAL ENERGY, LLC, ANDREW KRAUSE, and PETER PAISLEY, Defendants-Appellees. — Thomas P. Bruetsch

Plaintiff Innovation Ventures produces and sells 5-hour Energy drink. Innovation Ventures has sued defendant Liquid Manufacturing, which formerly bottled its product, and defendant K&L, which acted as an independent contractor for it, as well as their president and owner. Liquid Manufacturing and K&L formed Eternal Energy LLC and LXR Biotech, LLC to produce and sell a product called Eternal Energy, a competitor to 5-hour Energy. Innovation Ventures argues that Liquid Manufacturing and K&L, and the other defendants, breached non-competition and confidentiality provisions in the parties' contracts, misappropriated trade secrets, and engaged in other tortious conduct. The trial court dismissed all of Innovation Ventures' claims, concluding that the non-compete and confidentiality provisions were unenforceable. The Court of Appeals affirmed in an unpublished opinion. The Supreme Court will consider whether the parties' nondisclosure agreements are void due to failure of consideration, and whether the non-compete provisions are enforceable.

March 9 Afternoon Session

Docket # 150789

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, — Thomas M. Chambers

v (Appeal from Ct of Appeals) (Wayne – Boykin, U.)

CHARLES JEROME DOUGLAS, Defendant-Appellant. — Peter Jon VanHoek

A jury convicted defendant Charles Jerome Douglas of several weapons-related charges. Douglas was sentenced to two concurrent terms of two to ten years in prison, and a five-year consecutive sentence. Douglas raised several issues on appeal, including a challenge to the way his sentence was calculated. He argued that the trial court erred when it scored offense variable (OV) 13 (continuing pattern of criminal behavior), MCL 777.43, at 10 points, and that this error affected his sentence. Douglas also argued that his trial counsel was ineffective for failing to bring this error to the attention of the sentencing judge. The Court of Appeals affirmed Douglas's convictions and sentences in an unpublished opinion. Douglas filed an application for leave to appeal to the Supreme Court, which has scheduled oral argument on the application. The Court directed the parties to address "whether *People v Lockridge*, 498 Mich 358 (2015), by rendering the sentencing guidelines advisory and/or by employing a remedy that does not mandate resentencing, affects (1) whether a defendant can be afforded relief for an unpreserved meritorious challenge to the scoring of offense variables through a claim of ineffective assistance of counsel, see *People v Francisco*, 474 Mich 82, 89 n 8 (2006); and (2) the scope of relief, if any, to which a defendant is entitled when the defendant raises a meritorious challenge to the scoring of an offense variable, whether preserved or unpreserved, and the error changes the applicable guidelines range, whether the defendant's sentence falls within the corrected range or not. See *id*. at 89-90; see also *People v Kimble*, 470 Mich 305, 310 (2004)."

Docket # 151048

PEOPLE OF THE STATE OF MICHIGAN, Toni Odette
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Wayne – Talon, L.)

ANTONIO TONY GLOSTER, Kristin E. LaVoy
Defendant-Appellant.

Defendant Antonio Tony Gloster was convicted by a jury of armed robbery, and sentenced to 85 months to 20 years in prison. Gloster argued that the trial court erred when it scored offense variable (OV) 10 (exploitation of a vulnerable victim), MCL 777.40, at 15 points based on the court's finding that "predatory conduct" was involved in the crime. Gloster argued that there was no predatory conduct at all. He also argued that the trial court improperly scored the variable based on the conduct of his accomplices, who selected and robbed the elderly victim, rather than on his own conduct as the getaway driver. The Court of Appeals affirmed the scoring of OV 10 and Gloster's sentence in an unpublished per curiam opinion. Gloster filed an application for leave to appeal to the Supreme Court, which has scheduled oral argument on the application. The Court directed the parties to address whether Gloster was properly assigned 15 points for OV 10 for predatory conduct, and in particular, whether the scoring of OV 10 was proper based on Gloster's own conduct, or alternatively, based on the conduct of Gloster's accomplices. See MCL 767.39; cf. *People v Hunt*, 290 Mich App 317, 325-326 (2010) (conviction not based on aiding and abetting), cited in *People v Hardy*, 494 Mich 430, 442 n 32 (2013).

Docket # 150656

DEAN ALTOBELLI, Mark R. Granzotto
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Ingham – Manderfield, P)

MICHAEL W. HARTMANN, MICHAEL A. COAKLEY, Thomas G. Kienbaum
M. ANNA MAIURI, JOSEPH M. FAZIO, DOUGLAS M.

KILBOURNE, JOHN D. LESLIE, and JEROME R. WATSON,
Defendants-Appellants.

Attorney Dean Altobelli was a senior principal in the law firm of Miller Canfield Paddock & Stone. He sued the law firm's individual managing directors over a dispute that arose after he received and accepted an offer to work for Nick Saban at the University of Alabama football program. The law firm's operating agreement contains a mandatory arbitration agreement covering any dispute, controversy or claim between the law firm and a current or former principal. The individual defendants sought to compel arbitration and moved for dismissal of the lawsuit. The trial court denied the motion, and the Court of Appeals affirmed that ruling in a published opinion. The defendants filed an application for leave to appeal to the Supreme Court, which has scheduled oral argument. The Court has directed the parties to address "whether the Court of Appeals correctly affirmed the trial court's denial of the defendants' motion to dismiss based on the operating agreement's mandatory arbitration provision because the plaintiff's claims are directed at the individual defendants, rather than the law firm." The Court also asked the parties to address any theory under which the mandatory arbitration provision covering disputes "between the Firm . . . and any current or former Principal" may properly be invoked to resolve disputes between managing principals and a former principal.

March 10 Morning Session

Docket # 151899

PEOPLE OF THE STATE OF MICHIGAN, Brent Morton
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Eaton – Cunningham, J.)

ERNESTO EVARISTO URIBE, Ann M. Prater
Defendant-Appellant.

The prosecutor charged Ernesto Evaristo Uribe with five counts of criminal sexual conduct as a result of his alleged abuse of a young girl between the ages of five and nine years old. Before trial, the prosecutor sought the trial court's permission to introduce, under MCL 768.27a, evidence that Uribe had also attempted sexual contact with the young girl's half-sister, his biological daughter. MCL 768.27a is an evidentiary statute that applies to cases, like this one, in which a defendant is charged with a sexual offense against a minor. The statute allows the prosecution to present evidence that the defendant committed other sex crimes against children. In *People v Watkins*, 491 Mich 450 (2012), the Michigan Supreme Court explained that evidence admissible under MCL 768.27a is still subject to MRE 403. Under that evidentiary rule, a trial court may exclude relevant evidence for several reasons, including if the probative value of the evidence is substantially outweighed by danger of unfair prejudice. In this case, the trial court ruled that the prosecutor would not be permitted to present the evidence to the jury. The trial court concluded that the proposed testimony did not qualify as admissible under the statute, and that it would be more prejudicial than probative under MRE 403. The prosecutor appealed this ruling to the Court of Appeals, which reversed in a published opinion. The Court of Appeals concluded that the trial court misapplied *Watkins*, and it remanded the case for entry of an order allowing the evidence to be presented at trial. Uribe filed an application for leave to appeal to the Supreme Court, which has scheduled oral argument. The parties have been directed to address whether the trial court abused its discretion in excluding the testimony offered under MCL 768.27a, and whether the Court of Appeals properly applied *Watkins*.

Docket # 150616

CRAIG HECHT, Glen N. Lenhoff
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Genesee – Neithercut, G.)

NATIONAL HERITAGE ACADEMIES, INC., John J. Bursch
Defendant-Appellant.

Plaintiff Craig Hecht, a white third-grade teacher employed by the defendant National Heritage Academies, was discharged for having made an inappropriate racial statement, or joke, in front of students, and for interfering with the investigation of the incident. Hecht sued, alleging racial discrimination. He asserted that his race was a substantial reason for the discharge and that he was treated differently than similarly situated African-American employees who had often engaged in racial banter. The trial court denied National Heritage Academies' motion for summary disposition. The case proceeded to trial, where the jury returned a verdict in Hecht's favor. The Court of Appeals affirmed in a split unpublished opinion. National Heritage Academies filed an application for leave to appeal to the Supreme Court. The Court granted leave to appeal to consider whether the Court of Appeals erred (1) when it found sufficient direct evidence of racial discrimination; (2) when it concluded that Hecht was similarly situated to African-American employees who had made race-based remarks in the past; and (3) when it held that the trial court did not abuse its discretion in admitting evidence of the disclosures made by the National Heritage Academies to Hecht's prospective employers of Hecht's alleged unprofessional misconduct, which were mandated by MCL 380.1230b of the School Code.

Docket # 150891

EARL H. ALLARD, JR., James N. McNally
Plaintiff-Appellant,

v (Appeal from Ct of Appeals)
(Wayne – Maher-Brennan, M.)

CHRISTINE A. ALLARD, Kevin S. Gentry
Defendant-Appellee.

Just before their marriage in 1993, the parties entered into an antenuptial agreement providing for the distribution of their assets and property if they were to divorce. During the marriage, plaintiff Earl Allard bought real estate through several limited liability companies (LLCs) that were created during the marriage. Then, in 2010, he filed for divorce. The only disputed issue was how the antenuptial agreement affected the division of property. Defendant Christine Allard argued that the agreement was void and unconscionable. The trial court held that the agreement was valid and enforceable, and interpreted it as entitling Earl Allard to ownership of all of the LLCs and their related properties. Christine Allard appealed, and the Court of Appeals issued a published opinion that reversed part of the trial court's ruling. The appeals court agreed with the trial court that the antenuptial agreement was valid and enforceable, but the panel concluded that the trial court had misapplied the agreement. The panel ruled that the property acquired by the LLCs was not subject to the antenuptial agreement, and that the agreement did not treat the income earned by the parties during the marriage as separate property. The appeals court remanded the case to the trial court for additional findings. Plaintiff Earl Allard filed an application for leave to appeal to the Supreme Court. The Court granted leave to appeal, and directed the parties to address (1) whether MCL 552.23 and MCL 552.401, which address when a spouse's separate estate may be treated as marital property, are inapplicable where the parties entered into an antenuptial

agreement; and (2) whether the real estate held by the plaintiff's LLCs, including the marital home, and any income generated by those properties, could be treated as marital assets and, if so, under what conditions.

Docket # 150970

KIMBERLY CORL, Personal Representative of the ESTATE OF BRADLEY CORL,
Plaintiff-Appellee,

Phillip B. Maxwell

v (Appeal from Ct of Appeals)
Tuscola – Gierhart, A.)

HURON & EASTERN RAILWAY COMPANY, INC., and RAILAMERICA, INC.,
Defendants-Appellants.

James R. Carnes

The decedent, Bradley Corl, came to a complete stop at a train crossing; but his vehicle then moved onto the tracks where it was struck by an oncoming train. Plaintiff Kimberly Corl, personal representative of the Estate of Bradley Corl, filed a lawsuit against Huron & Eastern Railway alleging, among other things, that the railway breached a duty to create a clear vision area by failing to remove the vegetation that allegedly obscured Corl's view of the oncoming train. The trial court denied the railway's motion for summary disposition. In an unpublished per curiam decision, the Court of Appeals affirmed that part of the trial court's ruling addressing the duty to clear vegetation from the crossing. The railway has argued that, under MCL 462.317(1) and *Paddock v Tuscola & Saginaw Bay Railway Company*, 225 Mich App 526 (1997), the duty to clear vegetation rested with the road authority. The Court of Appeals rejected this argument, holding that neither *Paddock* nor MCL 462.317(1) affected a railway's own common law duty to provide a safe grade crossing. The railway filed an application for leave to appeal. The Court has scheduled oral argument on the application, asking the parties to address: (1) whether the Court of Appeals decision conflicts with *Paddock v Tuscola & Saginaw Bay Railway Company*, 225 Mich App 526 (1997), and MCL 462.317; and (2) whether *Paddock* was correctly decided.